HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 709 of 2005 (MS)

1. Km. Vandana d/o Sri Jai Jai Ram Sharma R/o Park Road, Dehradun
2. Dinesh Kumar Mehta s/o Sri Anant Ram Mehta r/o Mohalla Mehtan, Jwalapur, Tehsil Haridwar, District Haridwar ..... Petitioners

versus

1. IInd Additional Civil Judge (J.D.) Haridwar
2. Hemchand s/o Sri Kundan R/o Kumhargarha, Kankhal, Haridwar
3. Subhash s/o Sri Amir Singh r/o Kumargarha, Kankhal, Haridwar
4. Bharat Sanchar Nigam Ltd; through General Manager, Door Sanchar, District Door Sanchar Bhawan, Haridwar
5. Devi Dutt s/o Sri Chandra Dutt r/o Mohalla Holi, Kankhal, Haridwar .... Respondents

Sri Rajendra Dobhal, Advocate for the petitioners
Sri Sharad Sharma for respondents no. 2 and 3
A.S.G. for respondent no. 4.

Dated: 28.7.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the order dated 9.5.2005 passed by the respondent no. 1 in Original Suit No. 187 of 2001.

Briefly stated on 25.5.2001 the petitioner no. 2 along with respondent no. 5 and 6 and one Smt. Vishnu Priya filed a suit No. 187 of 2001 Dinesh Kumar Mehta and others vs. Hemchand and others in the Court of Civil Judge (JD), Haridwar for permanent injunction, restraining the respondent no. 2 and 3 from transferring the property in dispute in favour of

respondent no. 4 and further restraining them from interfering in possession of petitioner no. 2, respondent no. 5, 6 and Smt. Vishnu Priya. During the pendency of the suit Smt. Vishnu Priya has expired and she gave her share of property in suit to the respondent no. 1 vide will dated 7.8.2004. Petitioner no. 2 moved application for substitution of petitioner no. 1 in the Original suit, which was allowed by the trial Court vide order dated 18.3.2005. According to the petitioners due to illness and later on death of his father petitioner no. 2 who was doing pairvi in the original suit, could not comply the order passed by the trial Court within the prescribed period. The petitioners moved application on 9.5.2005 for extension of time of three days for incorporating the amendment in the original suit, which has been rejected by the trial Court vide impugned order dated 9.5.2005.

Order dated 18.3.2005 passed by the trial Court shows that application for amendment was allowed and petitioners were directed to incorporate the amendment within a week. Another application was moved by the petitioners on 9.5.2005 praying for three days time to incorporate amendment in the plaint. The impugned order passed by the Civil Judge (J.D.) shows that the application has been rejected on hyper technical grounds. Power to allow amendment of the pleadings can be exercised at any stage and a liberal view should be taken for permitting the amendment.

In the case of ***B.K.N. Pillai Vs. P. Pillai and another 2000 (38) ALR S.C. Page 338,*** the Apex Court has observed as under:-

"The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such

manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in thue interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hyper technical approach. Liberal approach shuld be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

The amendment has been refused only on the technical ground. The law regarding amendment is very much clear as has been held in ***M/s Estrella Rubber Vs. Dass Estate 2001 (3) Civil Court Cases 663 (S.C)*** after relying upon the judgment ***of B.K. Pillai v. Parameshwaran Pillai and another (2000) 1 SCC 712.*** The apex courts has observed as under:-

"3. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment cannot be claimed as a matter of right and under all circumstances. But is equally true that the courts while deciding such prayers should not adopt a hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation."

Thus in case the heir of the deceased plaintiff is not made party to the suit by way of amendment in the plaint, the dispute cannot be adjudicated effectively and the suit shall be vitiated in the absence of necessary parties.

In view of above, the Civil Judge (J.D.) Haridwar is directed to permit the petitioner to incorporate amendment in the plaint and after giving opportunity to the defendants to file additional written statement. The suit is directed to be proceeded in accordance with law expeditiously.

Accordingly, writ petition is allowed. No order as to costs.

Dated: 28.7.2006 **Rajesh Tandon, J.**

*Dhyani